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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/719,372      | 11/21/2003  | Gary A. Dahl         | 310307.00005        | 3663             |

7590 09/29/2006

Medlen & Carroll, LLP  
101 Howard Street  
Suite 350  
San Francisco, CA 94105

EXAMINER

HUTSON, RICHARD G

ART UNIT PAPER NUMBER

1652

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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| APPLICATION NO./<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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| EXAMINER |
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| ART UNIT |
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| PAPER |
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20060920

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Claims 172-205 are still at issue and are present for examination.

Applicant's election without traverse of Group I, Claims 1-45, 80-99, 108-144 is acknowledged. It is further noted that a restriction requirement was also made accordingly:

For each of inventions I-V above, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of inventions I-IV and one of inventions (A)-(E).

- (A). SEQ ID NO: 1 or a sequence encoding SEQ ID NO: 2.
- (B). SEQ ID NO: 3 or a sequence encoding SEQ ID NO: 4.
- (C). SEQ ID NO: 5 or a sequence encoding SEQ ID NO: 6.
- (D). SEQ ID NO: 7 or a sequence encoding SEQ ID NO: 8.
- (E). SEQ ID NO: 14 or a sequence encoding SEQ ID NO: 15.

For each of inventions I-V above, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of inventions I-IV and one of inventions (A)-(E).

- (F). SEQ ID NO: 16
- (G). SEQ ID NO: 19.
- (H). SEQ ID NO: 27.
- (I). SEQ ID NO: 28.
- (G). SEQ ID NO: 29.

For each of inventions I-V above, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of inventions I-IV and one of inventions (A)-(E).

- (J). E. coli RNAP and promoter.
- (K). T7 RNAP and promoter.
- (L). T3 RNAP and promoter.
- (M). SP6 RNAP and promoter.

Applicants responded to this requirement, in the paper of 7/24/2006, by stating, "Applicants submit that these groups of restrictions are moot as the dependent claims reciting these SEQ IDs and promoters have been cancelled." Applicant's response is considered non-responsive given that Applicant was advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant's attention is directed to MPEP Form Paragraph 8.02 which states: "...Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must

-- include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a)."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Hutson whose telephone number is 571-272-0930. The examiner can normally be reached on M-F, 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard G Hutson, Ph.D. Primary Examiner Art Unit 1652

rgH  
9/21/2006

**RICHARD HUTSON, PH.D.  
PRIMARY EXAMINER**